

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

## COSTCO WHOLESALE CORPORATION,

**Plaintiffs.**

V.

## ARROWOOD INDEMNITY COMPANY.

**Defendant**

No. 2:17-cv-01212-RSL

**[PROPOSED] STIPULATED  
PROTECTIVE ORDER**

Pursuant to Federal Rule of Civil Procedure 26(c) and Local Civil Rule 26(c)(2), Plaintiff Costco Wholesale Corporation (“Costco”) and Defendant Arrowood Indemnity Company (“Arrowood”), by and through their respective counsel, hereby agree and stipulate to the entry of a Protective Order governing discovery with the following terms:

## 1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with Local Civil Rule 5 and Local Civil Rule 26(c). It does not confer blanket protection on all disclosures or responses to discovery.

1 The protection it affords from public disclosure and use extends only to the limited information  
2 or items that are entitled to confidential treatment under the applicable legal principles, and it  
3 does not presumptively entitle parties to file confidential information under seal.

4 Further, it is the intent of the parties that notwithstanding this Stipulated Protective Order,  
5 the parties are required to comply with the terms of the Court's Minute Order dated September  
6 22, 2017, and any subsequent Case Management Order(s) with respect to the protections for  
7 confidential or privileged materials. The parties also agree that the Stipulated Protective Order  
8 does not entitle either party to production of discovery designated as confidential pursuant to the  
9 terms below and neither party has agreed to produce any such material except as otherwise  
10 required by the federal rules.

12 2. "CONFIDENTIAL" MATERIAL

13 "Confidential" material shall include the following documents and tangible things  
14 produced or otherwise exchanged: documents, correspondence, and all other materials relating  
15 to claims resolved through any arbitration under the settlement in the underlying action giving  
16 rise to this matter, including but not limited to filings, award decisions and award amounts  
17 stemming from any arbitration decisions; invoices (including redacted invoices) related to the  
18 same and to the underlying case; confidential settlement documents; documents relating to  
19 retention of attorneys and experts; communications between Costco or its representatives and its  
20 carriers; documents designated as confidential or sealed in the underlying action.

23 3. SCOPE

24 The protections conferred by this agreement cover not only confidential material (as  
25 defined above), but also (1) any information copied or extracted from confidential material; (2)

1 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,  
2 conversations, or presentations by parties or their counsel that might reveal confidential material.

3 However, the protections conferred by this agreement do not cover information that is in  
4 the public domain or becomes part of the public domain through trial or otherwise. Any use of  
5 Protected Material at trial shall be governed by a separate agreement or order.

6 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

7       4.1 Basic Principles. A receiving party may use confidential material that is disclosed  
8 or produced by another party or by a non-party in connection with this case only for prosecuting,  
9 defending, or attempting to settle this litigation. Confidential material may be disclosed only to  
10 the categories of persons and under the conditions described in this agreement. Confidential  
11 material must be stored and maintained by a receiving party at a location and in a secure manner  
12 that ensures that access is limited to the persons authorized under this agreement.

13       4.2 Disclosure of Confidential Information or Items. Unless otherwise ordered by the  
14 Court or permitted in writing by the designating party, a receiving party may disclose any  
15 confidential material only to:

16           (a) The receiving party's counsel of record in this action, as well as employees of  
17 counsel to whom it is reasonably necessary to disclose the information for this litigation;

18           (b) The officers, directors, and employees (including in house counsel), of the  
19 receiving party to whom disclosure is reasonably necessary for this litigation;

20           (c) Experts and consultants to whom disclosure is reasonably necessary for this  
21 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

22           (d) The Court, court personnel, and court reporters and their staff;

23           (e) Reinsurers and retrocessionaires, and their employees;

1                             (f) Copy or imaging services retained by counsel to assist in the duplication of  
2 confidential material, provided that counsel for the party retaining the copy or imaging service  
3 instructs the service not to disclose any confidential material to third parties and to immediately  
4 return all originals and copies of any confidential material;

5                             (g) During their depositions, witnesses in the action to whom disclosure is  
6 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"  
7 (Exhibit A), unless otherwise agreed by the designating party or ordered by the Court. Pages of  
8 transcribed deposition testimony or exhibits to depositions that reveal confidential material must  
9 be separately bound by the court reporter and may not be disclosed to anyone except as permitted  
10 under this agreement;

11                             (h) The author or recipient of a document containing the information or a  
12 custodian or other person who otherwise possessed or knew the information.

13                             4.3     Filing Confidential Material. Before filing confidential material or discussing or  
14 referencing such material in court filings, the filing party shall confer with the designating party  
15 to determine whether the designating party will remove the confidential designation, whether the  
16 document can be redacted, or whether a motion to seal or stipulation and proposed order is  
17 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the  
18 standards that will be applied when a party seeks permission from the court to file material under  
19 seal.

20                             5.     DESIGNATING PROTECTED MATERIAL

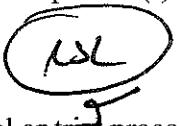
21                             5.1     Exercise of Restraint and Care in Designating Material for Protection. Each party  
22 or non-party that designates information or items for protection under this agreement must take  
23 care to limit any such designation to specific material that qualifies under the appropriate  
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1 standards. The designating party must designate for protection only those parts of material,  
2 documents, items, or oral or written communications that qualify, so that other portions of the  
3 material, documents, items, or communications for which protection is not warranted are not  
4 swept unjustifiably within the ambit of this agreement.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
6 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to  
7 unnecessarily encumber or delay the case development process or to impose unnecessary  
8 expenses and burdens on other parties) expose the designating party to sanctions.

9  
10 If it comes to a designating party's attention that information or items that it designated  
11 for protection do not qualify for protection, the designating party must promptly notify all other  
12 parties that it is withdrawing the mistaken designation.

13  
14 5.2 Manner and Timing of Designations. Except as otherwise provided in this  
15 agreement (see, e.g., section 5.2(b) below), or as otherwise stipulated or ordered, disclosure or  
16 discovery material that qualifies for protection under this agreement must be clearly so  
17 designated before or when the material is disclosed or produced.

18 (a) Information in documentary form: (e.g., paper or electronic documents and  
19 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings),  
20 the designating party must affix the word "CONFIDENTIAL" to each page that contains  
21 confidential material. If only a portion or portions of the material on a page qualifies for  
22 protection, the producing party also must clearly identify the protected portion(s) (e.g., by  
23 making appropriate markings in the margins). 

24  
25 (b) Testimony given in deposition or in other pretrial or trial proceedings: the  
26 parties must identify on the record, during the deposition, hearing, or other proceeding, all  
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1 protected testimony, without prejudice to their right to so designate other testimony after  
2 reviewing the transcript. Any party or non-party may, within fifteen days after receiving a  
3 deposition transcript, designate portions of the transcript, or exhibits thereto, as confidential.

4                     (c) Other tangible items: the producing party must affix in a prominent place on  
5 the exterior of the container or containers in which the information or item is stored the word  
6 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,  
7 the producing party, to the extent practicable, shall identify the protected portion(s).

8                 5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
9 designate qualified information or items does not, standing alone, waive the designating party's  
10 right to secure protection under this agreement for such material. Upon timely correction of a  
11 designation, the receiving party must make reasonable efforts to ensure that the material is  
12 treated in accordance with the provisions of this agreement.  
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14                 6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

15                 6.1     Timing of Challenges. Any party or non-party may challenge a designation of  
16 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality  
17 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic  
18 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to  
19 challenge a confidentiality designation by electing not to mount a challenge promptly after the  
20 original designation is disclosed.  
21

22                 6.2     Meet and Confer. The parties must make every attempt to resolve any dispute  
23 regarding confidential designations without court involvement. Any motion regarding  
24 confidential designations or for a protective order must include a certification, in the motion or in  
25 a declaration or affidavit, that the movant has engaged in a good faith meet and confer  
26

1 conference with other affected parties in an effort to resolve the dispute without court action.

2 The certification must list the date, manner, and participants to the conference. A good faith

3 effort to confer requires a face-to-face meeting or a telephone conference.

4       6.3     Judicial Intervention. If the parties cannot resolve a challenge without court  
5 intervention, the designating party may file and serve a motion to retain confidentiality under  
6 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of  
7 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those  
8 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on  
9 other parties) may expose the challenging party to sanctions. All parties shall continue to  
10 maintain the material in question as confidential until the Court rules on the challenge.

11       7.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER  
12           LITIGATION

13       If a party is served with a subpoena or a court order issued in other litigation that compels  
14 disclosure of any information or items designated in this action as "CONFIDENTIAL," that  
15 party must:

16           (a) Promptly notify the designating party in writing and include a copy of the  
17 subpoena or court order;

18           (b) Promptly notify in writing the party who caused the subpoena or order to issue  
19 in the other litigation that some or all of the material covered by the subpoena or order is subject  
20 to this agreement. Such notification shall include a copy of this agreement; and

21           (c) Cooperate with respect to all reasonable procedures sought to be pursued by  
22 the designating party whose confidential material may be affected.

23       The designating party shall bear the burden and expense of seeking protection in the court  
24 that issued the subpoena or order of its confidential material, and nothing in these provisions

1 should be construed as authorizing or encouraging a receiving party in this action to disobey a  
2 lawful directive from another court.

3       8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

4       If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential  
5 material to any person or in any circumstance not authorized under this agreement, the receiving  
6 party must immediately (a) notify in writing the designating party of the unauthorized  
7 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,  
8 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of  
9 this agreement, and (d) request that such person or persons execute the "Acknowledgment and  
10 Agreement to Be Bound" that is attached hereto as Exhibit A.

11     9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED  
12       MATERIAL

13       When a producing party gives notice to receiving parties that certain inadvertently  
14 produced material is subject to a claim of privilege or other protection, the obligations of the  
15 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This  
16 provision is not intended to modify whatever procedure may be established in an e-discovery  
17 order or agreement that provides for production without prior privilege review. Parties shall  
18 confer on an appropriate non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

19     10. NON TERMINATION AND RETURN OF DOCUMENTS

20       Within 60 days after the termination of this action, including all appeals, each receiving  
21 party must return all confidential material to the producing party, including all copies, extracts  
22 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of  
23 destruction.  
24

1 Notwithstanding this provision, counsel are entitled to retain one archival copy of all  
2 documents filed with the Court, trial, deposition, and hearing transcripts, correspondence,  
3 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert  
4 work product, even if such materials contain confidential material.

5 The confidentiality obligations imposed by this agreement shall remain in effect until a  
6 designating party agrees otherwise in writing or a court orders otherwise.  
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8 11. RIGHT TO FURTHER RELIEF

9 Nothing in this Order abridges the right of any Party to seek its modification by the Court  
10 in the future. This Order and Agreement may be enforced by an Order of specific performance,  
11 as well as any claim for damages.

12  
13  
14 IT IS SO STIPULATED this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

15 By /s/ Paul J. Lawrence

16  
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23 *Attorneys for Defendant*

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25  
26  
27 *Attorneys for Plaintiffs*

1 PURSUANT TO STIPULATION, IT IS SO ORDERED  
2 DATED: Jan. 11, 2018  
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*MRSCasnik*

Honorable Robert S. Lasnik  
United States District Judge

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**EXHIBIT A**

**ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND**

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address],

declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of Costco Wholesale Corporation v.

Arrowood Indemnity Company, Case No. 2:17-cv-01212-RSL. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed:

Printed name:

Signature: